

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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JUDY CAVELL,

Plaintiff,

v.

NO. CIV. S-05-0432 FCD DAD

MEMORANDUM AND ORDER

FIDELITY NATIONAL FINANCIAL,
INC., FIDELITY NATIONAL
FINANCIAL'S WELFARE BENEFIT
PLAN, CHICAGO TITLE
CORPORATION, CHICAGO TITLE AND
TRUST COMPANY, CHICAGO TRUST
AND TITLE COMPANY'S GROUP
INSURANCE PLAN, HARTFORD LIFE
AND ACCIDENT INSURANCE COMPANY
and DOES 1 through 10,
inclusive,

Defendants.

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This matter comes before the court on defendants'
Fidelity National Financial, Inc. ("FNF"), Fidelity National
Financial's Welfare Benefit Plan, Chicago Title Company ("CTC")
Chicago Title and Trust Company ("CTTC"), and Chicago Title and

1 Trust Company's Group Insurance's motion to dismiss plaintiff's
2 complaint pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal
3 Rules of Civil Procedure.¹ For the reasons set forth below,²
4 defendants' motion is GRANTED.

5 **BACKGROUND³**

6 Plaintiff Judy Cavell is 54 years old, and has been unable
7 to work since 1990 due to a brain tumor she suffered in 1989.
8 (Compl., filed Mar. 3, 2005, ¶ 11). From 1987 until 2000,
9 plaintiff was a participant in CTTC's Group Insurance Plan, which
10 included a comprehensive major medical and dental plan, a life
11 insurance plan, and disability insurance plans. (Id. ¶ 4).
12 Beginning February 5, 1991, plaintiff received Long Term
13 Disability benefits under the terms of a plan sponsored by CTC
14 and administered by CTTC. (Id. ¶¶ 12, 7). In or around 2000,
15 FNF merged with CTC. (Id. ¶ 12). Plaintiff then became a
16 participant in FNF's Welfare Benefit Plan, which provided Group
17 Life, Supplemental Life, Accidental Death and Dismemberment,
18 Dependent Life, and Supplemental Dependent Life Insurance. (Id.
19 ¶ 5). CTC has remained a separate and distinct corporation.
20 (Id.)

21 In October 2001, FNF notified plaintiff that it did not
22 consider her an employee and was therefore terminating her
23

24 ¹ All further references to a "Rule" are to the Federal
25 Rules of Civil Procedure.

26 ² Because oral argument will not be of material
27 assistance, the court orders this matter submitted on the briefs.
E.D. Cal. Local Rule 78-230(h).

28 ³ The facts of this case are taken from plaintiff's
allegations in the complaint.

1 medical plan effective December 31, 2001. (Id. ¶ 13). However,
2 in January 2002, FNF permitted plaintiff to choose a new medical
3 coverage plan and continued to provide her medical coverage.
4 (Id. ¶ 14). In January 2003, FNF again notified plaintiff that
5 they were terminating her medical coverage effective March 31,
6 2003. (Id. ¶ 15).

7 On March 12, 2003, plaintiff wrote to FNF and requested
8 various plan documents from FNF and CTC. (Id. ¶ 16). Plaintiff
9 renewed this request on April 14, 2003. (Id. ¶ 17). Plaintiff
10 renewed this request again on July 6, 2004. (Id. ¶ 19). On July
11 1, 2004, FNF informed plaintiff that FNF would be terminating her
12 medical coverage on July 31, 2004, and subsequently, did
13 terminate plaintiff's benefits on that date. (Id. ¶ 18).

14 On August 2, 2004, plaintiff again requested that the
15 various plan documents be provided forthwith. (Id. ¶ 20). On or
16 about September 23, 2004, defendants informed plaintiff that they
17 did not have the time or staff to provide the requested
18 documents, but that they would provide a summary plan
19 description. (Id. ¶ 21). Defendants have never provided the
20 description or the requested documents. (Id. ¶ 21).

21 Plaintiff brings this claim seeking information and monetary
22 penalties pursuant to Section 502 of the Employee Retirement
23 Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1132(c)(1) and
24 29 U.S.C. § 1132(g)(1). Plaintiff asks the court to (1) declare
25 her right to receive the documents she has requested from
26 defendants; (2) declare that defendants violated 29 U.S.C. §
27 1132(c)(1) by failing or refusing to provide plaintiff with the
28 requested information within 30 days of the request; (3) order

1 defendants to pay \$100 per day for each day after April 11, 2003
2 until such information is provided to plaintiff; (4) award
3 plaintiff attorneys' fees and costs; and (5) any such other
4 relief as the court deems proper.

5 Defendants FNF, FNF's Welfare Benefit Plan, CTC, CTTC, and
6 CTTC's Group Insurance filed a motion to dismiss pursuant to
7 Rules 12(b)(1) and 12(b)(6). Defendants contend that the court
8 lacks jurisdiction over this action because plaintiff lacks
9 standing to bring this claim. Defendants further argue, that if
10 plaintiff does have standing, she fails to state a claim upon
11 which relief may be granted and that any claim she could have is
12 barred by the statute of limitations.

13 **STANDARD**

14 **A. Rule 12(b)(1): Jurisdiction**

15 Lack of subject matter jurisdiction may be asserted by
16 either party or the court, *sua sponte*, at any time during the
17 course of an action. Fed. R. Civ. P. 12(b)(1). Once challenged,
18 the burden of establishing a federal court's jurisdiction rests
19 on the party asserting the jurisdiction. See Farmers Ins. Exch.
20 v. Portage La Prairie Mut. Ins. Co., 907 F.2d 911, 912 (9th Cir.
21 1990). There are two forms of 12(b)(1) attacks on subject matter
22 jurisdiction: facial and factual attacks. See Thornhill Publ'g
23 Co. v. General Tel. & Elecs. Corp., 594 F.2d 730, 733 (9th Cir.
24 1979). In an action such as this, where defendant contends that
25 the lack of federal jurisdiction appears from the "face of the
26 complaint," the allegations in the complaint are taken as true
27 for the purposes of the motion. Id.

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B. Rule 12(b)(6): Failure to State a Claim

On a motion to dismiss, the allegations of the complaint must be accepted as true. Cruz v. Beto, 405 U.S. 319, 322 (1972). The court is bound to give plaintiff the benefit of every reasonable inference to be drawn from the "well-pleaded" allegations of the complaint. Retail Clerks Int'l Ass'n v. Schermerhorn, 373 U.S. 746, 753 n.6 (1963). Thus, the plaintiff need not necessarily plead a particular fact if that fact is a reasonable inference from facts properly alleged. See id.

Given that the complaint is construed favorably to the pleader, the court may not dismiss the complaint for failure to state a claim unless it appears beyond a doubt that the plaintiff can prove no set of facts in support of the claim which would entitle him or her to relief. Conley v. Gibson, 355 U.S. 41, 45 (1957); NL Industries, Inc. v. Kaplan, 792 F.2d 896, 898 (9th Cir. 1986).

Nevertheless, it is inappropriate to assume that plaintiff "can prove facts which it has not alleged or that the defendant[] ha[s] violated the . . . laws in ways that have not been alleged." Associated Gen. Contractors of Calif., Inc. v. Cal. State Council of Carpenters, 459 U.S. 519, 526 (1983). Moreover, the court "need not assume the truth of legal conclusions cast in the form of factual allegations." United States ex rel. Chunie v. Ringrose, 788 F.2d 638, 643 n.2 (9th Cir. 1986).

ANALYSIS

A. Standing

1. Right of Civil Enforcement

Defendants argue that plaintiff's claim should be dismissed

1 because she lacks standing. First, defendants contend that
2 plaintiff failed to cite any statute that gives her a private
3 right of civil action or civil enforcement. Plaintiff brings her
4 claim pursuant to section 502 of ERISA, codified in part in 29
5 U.S.C. § 1132(c)(1). Section 1132 is titled "Civil Enforcement."
6 Section 1132(c) provides that

7 [a]ny administrator . . . who fails or refuses to
8 comply with a request for any information which such
9 administrator is required by this subchapter to furnish
10 to a participant or beneficiary . . . may in the
court's discretion be personally liable to such
participant or beneficiary in the amount of up to \$100
a day.

11 29 U.S.C. § 1132(c)(1)(B). This section gives a plan participant
12 a civil right of action against an administrator. 29 U.S.C. §
13 1132; See Firestone Tire & Rubber Co. V. Bruch, 489 U.S. 101,
14 115-16 (1989); Moran v. Aetna Life Ins. Co., 872 F.2d 296 (9th
15 Cir. 1989); Hernandez v. S. Nev. Culinary & Bartenders Pension
16 Trust, 662 F.2d 617, 620-21 (9th Cir. 1981).

17 Defendants contend that plaintiff's complaint should be
18 dismissed because she did not identify the subsection of §
19 1132(c)(1) under which she is bringing suit. Plaintiff specified
20 that she was bringing suit under § 1132(c)(1). (Compl. ¶ 1).
21 The sole claim of plaintiff's complaint is that defendants failed
22 or refused to send plaintiff the requested material within 30
23 days of her request. (Id. ¶¶ 24-26). Relief for this claim is
24 directly addressed in § 1132(c)(1)(B) in terms similar to those
25 used in plaintiff's complaint. (Id.) Therefore, under the
26 liberal notice pleading standard, defendants had notice of the
27 subsection under which plaintiff was seeking relief. Defendants'
28 motion to dismiss cannot be granted on these grounds.

1 **2. Plan Participant**

2 Second, defendants contend that plaintiff does not have
3 standing pursuant to § 1132(c) because she is not a plan
4 participant. Section 1132(a) provides that a civil action may be
5 brought by a plan participant or beneficiary for the relief
6 provided in § 1132(c). For purposes of ERISA claims,

7 [t]he term participant means any employee or former
8 employee of an employer . . . who is or may become
9 eligible to receive a benefit of any type from an
employee benefit plan which covers employees of such
employer

10 29 U.S.C. § 1002(7). The Supreme Court has held that "the term
11 'participant' is naturally read to mean either 'employees in, or
12 reasonably expected to be in, currently covered employment.'" Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 117 (1989)
13 (quoting Saladino v. I.L.G.W.U. Nat'l Retirement Fund, 752 F.2d
14 473, 476 (2d Cir. 1985). In order for a claimant to establish
15 that she "may become eligible" for benefits, a claimant must have
16 a colorable claim that (1) she will prevail in a suit for
17 benefits, or (2) eligibility requirements will be fulfilled in
18 the future. Id. at 118.

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20 Defendants rely on the Ninth Circuit's ruling and reasoning
21 in Kuntz v. Reese, 785 F.2d 1410 (9th Cir. 1986), to substantiate
22 their argument that plaintiff must be a plan participant at the
23 time the complaint was filed in order to qualify as a
24 participant. Kuntz is inapplicable to the case at bar. In
25 Kuntz, plaintiffs were retirees who had accepted the payment of
26 everything due them in a lump sum payment and were not eligible
27 for any further benefits. Id. at 1411. The court held that they
28 did not have standing as "participants" because such retirees

1 "have no present or future right to Plan funds." Id. In this
 2 case, plaintiff was a plan participant at the time she requested
 3 documents from the defendants. (Compl. ¶¶ 16, 26). Further,
 4 plaintiff may have a colorable claim for reinstatement of
 5 benefits, dependant upon what the documents she requested from
 6 defendants reveal. (Compl. ¶ 23). Unlike the plaintiffs in
 7 Kuntz, plaintiff has not surrendered all of her rights and
 8 expectations of benefits in the medical benefits coverage
 9 supplied by defendants. In the words of § 1002(7), plaintiff
 10 "may become eligible to receive a benefit." Therefore, she is
 11 considered a participant and has standing to bring this claim.

12 **3. Proper Defendants**

13 Third, defendants contend that the only defendant against
 14 whom a claim may be brought is FNF because it is the only plan
 15 administrator named in the action. Section 1132(c)(1) provides
 16 that "any administrator" who does not comply with ERISA's
 17 disclosure requirements may be personally liable. 29 U.S.C. §
 18 1132(c)(1). Only administrators and those who function as
 19 administrators can be held liable under the section that
 20 plaintiff brings her claim.⁴ See Taft v. Equitable Life
 21 Assurance Soc'y, 9 F.3d 939, (holding employer who also acted as

22 ⁴ Plaintiff cites to a myriad of cases that find
 23 defendants who are not plan administrators liable under ERISA.
 24 However, most of these cases do not address claims brought under
 25 § 1132(c)(1). Those that do, confine liability to defendant
 26 administrators or defendants who functioned as plan
 27 administrators. Further, plaintiff cites to Harris Trust &
 28 Savings Bank v. Salomon Smith Barney, 530 U.S. 238, 246 (2000)
 for the proposition that there is "no limit on the universe of
 possible defendants" where ERISA does not explicitly establish
 one. The plaintiffs in Harris brought claims under 29 U.S.C. §
 1106(a). However, § 1132(c)(1) specifically provides that an
 "administrator" may be liable. 29 U.S.C. § 1132(c)(1).

1 administrator liable) (9th Cir. 1993). Plaintiff alleges in her
2 complaint that "at all relevant times" CTC and CTTC were
3 fiduciaries of her first benefit plan, and that CTTC functioned
4 as the plan administrator. (Compl. ¶ 9). Plaintiff also alleges
5 that "at all relevant times" FNF was a fiduciary of the second
6 benefit plan and functioned as the plan administrator. (Compl. ¶
7 10). Reading the allegations of the complaint in the light most
8 favorable to the plaintiff, plaintiff has adequately alleged that
9 CTTC and FNF functioned as plan administrators. However,
10 plaintiff has not alleged that CTC, CTTC's Group Insurance, or
11 FNF's Welfare Benefit Plan were plan administrators or functioned
12 as plan administrators. Therefore, defendants' motion to dismiss
13 plaintiff's complaint as it relates to defendants CTC, CTTC's
14 Group Insurance, and FNF's Welfare Benefit Plan is GRANTED. To
15 the extent that defendants' motion to dismiss relates to
16 defendants FNF and CTTC, defendants' motion is DENIED.

17 Defendants argue that CTTC cannot be liable because
18 defendant ceased being a plan administrator in 2000. However,
19 plaintiff alleges that CTTC was a plan administrator "at all
20 relevant times." On a motion to dismiss, the court must accept
21 plaintiff's allegations as true and must give plaintiff the
22 benefit of every reasonable inference to be drawn from the "well-
23 pleaded" allegations of the complaint. In this case, the court
24 must accept that CTTC was the plan administrator at all relevant
25 times, and that the relevant times include the dates when
26 plaintiff requested and failed to receive the benefit documents.
27 Therefore, plaintiff's claim against CTTC must stand.

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B. Failure to State a Claim

1. Statute of Limitations

Defendants argue that plaintiff's claim should be dismissed pursuant to Rule 12(b)(6) for failure to state a claim. Specifically, defendants assert that plaintiff's claims are barred by the statute of limitations.

Where ERISA does not provide its own statute of limitations, courts must apply the most analogous statute of limitations under state law. Felton v. Unisource Corp., 940 F.2d 503, 510 (9th Cir. 1991). The Ninth Circuit has held that the \$100 per day recovery under ERISA § 1132(c) is not a penalty for purposes of California limitation. Stone v. Travelers Corp., 58 F.3d 434, 438 (9th Cir. 1995) (relying on Rivera v. Anaya, 726 F.2d 564 (9th Cir. 1984)). Therefore, the applicable limitation for a claim brought pursuant to § 1132(c)(1) is found in California Code of Civil Procedure § 338(a), which provides a three-year limitation for an "action upon a liability created by statute, other than a penalty or forfeiture." Id.

Plaintiffs and defendants dispute the appropriate accrual date for purposes of this action. Plaintiff's complaint was filed on March 3, 2005, less than three years after April 11, 2003,⁵ the date upon which defendants were required to produce the requested documents. Therefore, plaintiff's ERISA claim is timely. Defendants' motion to dismiss on the grounds that

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⁵ For purposes of this motion, the court uses the accrual date urged by defendants, which is the earliest of the dates offered by the parties.

1 plaintiff's claim was not brought within the statute of
2 limitations is DENIED.

3 **2. Injunctive and Declaratory Relief**

4 Defendants also argue that plaintiff has failed to state a
5 claim for declaratory or injunctive relief because plaintiff has
6 failed to cite any statutes which provide for these forms of
7 relief. However, § 1132(c) provides that "the court may in its
8 discretion order such other relief as it deems proper." 29
9 U.S.C. § 1132(c). As such, this court may order the declaratory
10 and injunctive relief plaintiff seeks, and defendants' motion to
11 dismiss on these grounds is DENIED.

12 **3. 29 U.S.C. § 1132(c)**

13 Finally, defendants contend that plaintiff has failed to
14 state a claim because she has not identified the subchapter of
15 ERISA which requires defendants to furnish the information
16 requested by plaintiff. Section 1132(c) provides that a plan
17 participant may bring a civil action against any administrator
18 "who fails or refuses to comply with a request for any
19 information which such administrator is *required by this*
20 *subchapter to furnish to a participant.*" 29 U.S.C. §
21 1132(c)(1)(B). In her complaint, plaintiff fails to point to the
22 statute that requires defendants to furnish the documents
23 requested by plaintiff on March 12, 2003. As such, plaintiff has
24 failed to state a claim under 29 U.S.C. § 1132(c)(1)(B). Even
25 under the liberal notice pleading standard, plaintiff has failed
26 to alert defendants of the alleged duty to disclose with which
27 they failed to comply. Therefore, defendants' motion to dismiss
28 is GRANTED.

C. Leave to Amend

Plaintiff seeks leave to amend any material defects in her complaint. Pursuant to Rule 15(a), "leave [to amend] is to be freely given when justice so requires." "[L]eave to amend should be granted unless amendment would cause prejudice to the opposing party, is sought in bad faith, is futile, or creates undue delay." Martinez v. Newport Beach, 125 F.3d 777, 785 (9th Cir. 1997). Because there is no indication that plaintiff's amendment is sought in bad faith or is futile, and because plaintiff's case is at the early stages of litigation, plaintiff is granted leave to amend the complaint to allege that dismissed defendants were plan administrators or functioned as plan administrators of the benefit plan at issue in this case and to allege the statutory duty requiring defendants to disclose the materials requested by plaintiff on March 12, 2003. Therefore, justice requires that plaintiff be granted leave to amend the complaint.

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CONCLUSION

For the foregoing reasons, defendant's motion is GRANTED.⁶ Plaintiff is granted twenty (20) days from the date of this order to file an amended complaint in accordance with this order. Defendants are granted thirty (30) days from the date of service of plaintiff's amended complaint to file a response thereto.

IT IS SO ORDERED.

DATED: December 21, 2005

/s/ Frank C. Damrell Jr.
FRANK C. DAMRELL, Jr.
UNITED STATES DISTRICT JUDGE

⁶ Defendants contend that the court may want to consider whether Rule 11 sanctions would be appropriate in this case. Defendants have not properly made a motion to impose sanctions on plaintiff. Further, based upon the foregoing analysis, the court does not consider plaintiff's claims to be frivolous and thus, Rule 11 sanctions are not warranted.